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AUTHOR Morris, Robert G.
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ABSTRACT

Governing and/or coordinating boards have specific legal authority to manage the affairs of the institutions within their areas of responsibility. Throughout the states, the specific powers of these boards are being tested constantly. However, in test after test, the courts hesitate to enter into the governing or coordinating affairs of the boards. Briefs of 20 court cases illustrate the general feeling of the courts in this matter. (Author/HSE)

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GOVERNANCE OF HIGHER EDUCATION

A REVIEW OF RELEVANT COURT CASES

BY:

ROBERT G. NORRIS

THE FLORIDA STATE UNIVERSITY
DEPARTMENT OF POSTSECONDARY EDUCATION
DOCTOR OF EDUCATION PROGRAM
DR. CHARLES R. LEMLEY, PROFESSOR
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GOVERNANCE OF HIGHER EDUCATION

Nowhere in the United States Constitution is there a statement regarding education. Therefore, education is a state function. Each state has the power to create and maintain any type of educational system it so desires. The manner in which education is structured and governed is left to the discretion of the individual states as long as no state or federal law or constitutional provision is violated.

The organization of public higher education varies from state to state. Some states are highly centralized with one statewide board charged with the overall operation of all public colleges and universities within that state. Other states have separate boards for the different types of institutions. For example, one board may govern universities, another may govern the four-year colleges, and still another may have responsibility for the two-year colleges.

The state boards are usually classified according to their function, such as governing, coordinating, or a combination, governing/coordinating. The governing board is legally charged with the direct control and operation of the educational institutions. These boards have the sole and final authority to make decisions concerning the control and operation of the institutions under their jurisdictions. A coordinating board is charged with organizing, regulating, or otherwise bringing together overall policies or functions in areas of planning, budgeting, and programming. Many boards have the dual responsibilities of governing and coordinating. An example of a governing/coordinating board is Florida's Board of Regents which governs and coordinates the nine

universities in that state.

Governing and/or coordinating boards have specific legal authority to manage the affairs of the institutions within their areas of responsibility. Each board is responsible for the general supervision and the control and direction of all expenditures from the institution's funds. Further, the courts have ruled that once this power and authority is given to the board and once the operating funds have been allocated to the board, the legislature amy not exercise any control, either directly or indirectly, over the expenditures and direction of the university. This power is vested in the board in absolute and unqualified terms. However, the board, like any other agency of the state, is subject to such limitations as the legislature may prescribe.

Throughout the states, the specific powers of these boards are being tested constantly. However, in test after test, the courts consistantly hesitate to enter into the governing or coordinating affairs of the boards. As long as the boards act within the scope of intent of the State Constitutions and Legislatures and as long as no state or federal law or constitutional provision is violated, the courts will not enter into the "private domains" of the boards.

The paragraphs above present the general feeling of the courts in this matter. In order to obtain an overview of the reactions of the courts to specific situations, please review the following briefs of actual court cases where the courts spoke out in this matter.

Regents of the University of Michigan v. State of Michigan
208 N.W. 2d. 871 (1973)

An appeal by the treasurer and controller of the state from a judgment of the Ingham County Circuit Court determined that certain sections of an educational act were unconstitutional as applied to respective universities, and appeal by the state board of education from that portion of jucgment determined that the board possessed no power to require its prior approval of certain education programs proposed by universities before implementation of said programs. The Court of Appeals held that provisions of acts which prohibited expenditure of state funds for instructors or students who had been found guilty, either by courts or school officials, of interfering with university operations or damaging university property were violative of constitutional provisions vesting power to control and direct expenditure of institutional funds in respective boards of regents, governors, and trustees. It was further held that the state board of education does not have any authority over constitutionally sanctioned governing boards of universities. The decision provides, in effect, that an appropriation of college funds may be made upon condition that money snall be used for a specific purpose, or upon any other condition the legislature can lawfully impose, but that a condition cannot be imposed that would be an invasion of constitutional rights and powers of governing boards of colleges has been interpreted as legally restricting permissible scope of legislative conditions vis-a-vis university appropriations. Each board shall have

general supervision of its institution and the control and direction of all expenditures from the institution's funds. By quoting from Sterling v. Regents of the University of Michigan, 68 N.W. 253 (1896), the court stated further that, "The power therin conferred would be without force or effect if the legislature could control these expenditures by dictating what departments of learning the regents shall establish, and in what places they shall be located. Neither does it need any argument to show that the power contended for would take away from the regents the control and direction of the expenditures from the fund. The power to control these expenditures cannot be exercised directly or indirectly by the legislature. It is vested in the board of regents in absolute and unqualified terms. (emphasis added)

Dale R. Sprik v. Regents of the University of Michigan
204 NW 2d 62 (1972)

A class action suit was brought against the state university regents by married student housing residents who sought refund of rent increase collected by defendants and distributed to school district as a voluntary payment in lieu of taxes. The court entered summary judgment in favor of defendants, and the plaintiffs appealed. The Court of Appeals held that the rent increase was in fact merely an increase in rent, not an illegal tax, and the fact that the money was used for specific purpose did not change the nature of the payment.

The legislature may put certain conditions on money it appropriates for the University of Michigan, which conditions are binding if the

regents accept the money, but these conditions may not interfere with the regents' management of the university and may be applied only to state appropriated funds. Further, funds which are not state appropriations may be spent by state university regents for any object not subversive of their purpose.

Anderson v. Bellows 179 N.W. 2d. 307 (1970)

This was a mandamus proceeding to compel petitioner's reinstatement as chairman of division of humanities at a state college in Minnesota. The court granted petition, and appeal was taken. The Supreme Court held that absent proof of any act by the state college board reflecting knowledge and approval of dean's letter in which the dean offered petitioner a position of chariman of the division of humanities at the state college and in which the dean made reference to a four-year commitment, employment contract between petitioner and college board was from year to year, and petitioner, who was replaced as chairman of the division of humanities after approximately two years, was not entitled to order directing his reinstatement.

The court stated that exclusive power to enter into contracts of employment with professors is in the state college board except insofar as its duly promulgated rules and regulations delegate that responsibility to others. The exclusive authority for the management and control of each of the state colleges is vested in the state college board except in so far as that authority may be restricted by the legislature itself or delegated by the board to others.

Bailey v. University of Minnesota 187 N.W. 2d. 702 (1971)

The plaintiffs brought declaratory judgment action against state university and the board of regents requesting district court to retain jurisdiction and control over the administration of the university. The court granted defendants' motion for judgment on the pleadings and the plaintiffs appealed. The Supreme Court held that action did not present a justiciable controversy capable of judicial determination and that allegations criticizing the manner in which affairs of the university were being conducted did not show an abuse of governing authority by the board of regents justifying judicial intervention and control over the administration of the university. The courts may not interfere with board of regents of state university in the proper exercise of its function in governing the affairs of the university, a constitutional corporation. Courts must be reluctant to invade the sphere of authority reserved to regents of a state university by state constitution.

Kunimoto v. Kawakami 545 P. 2d. 684 (1976)

The owners of land designated for residential use in the general plan of the city and county of Honolulu petitioned for writ of prohibition to prohibit the circuit judge and the state from taking further action in eminent domain proceedings to take the land for expansion of a university campus. The Supreme Court held that provision in Hawaii Constitution that it is the state's function to provide for the establishment, support and control of a statewide system of public

schools and a state university encompasses, among other things, the selection and location of public school and state university sites, and the state was not required to conform with provisions of statute providing that no public improvement or project shall be initiated unless it conforms to and implements the development plan for that area.

Lieberman v. Marshall 236 So 2d. 120 (1970)

This was a Florida proceeding on a motion to dissolve temporary injunction restraining student group from holding meeting or rally in a university building until further order of the court. The Circuit Court denied motion and an appeal was taken. The Supreme Court held that issuance of an order restraining student groups, not recognized by the university, from using the university room for a rally, at a time when members of the group had begun occupation of the building, was not imporper because of lack of notice and hearing, and did not deny the group the right to assemble, nor freedom of speech. A university administrator has wide discretion in dealing with requirements of campus order and discipline, and with time, place, and manner of extracurricular lectures, and the Supreme Court will not ordinarily review the wisdom with which discretion is exercised.

Roy v. Edwards 294 So. 2d. 507 (1974)

This was a consolidation of cases seeking declaratory judgment decreeing that a 1972 Act creating the Louisiana Board of Regents to

govern all public institutions of higher education was unconstitutional insofar as it affected the Board of Supervisors of the Louisiana State University and Agricultural and Mechanical College and State Board of Education, and asked injunctive relief. The District Court declared the Act unconstitutional in its entirety and issued a permanent injunction prohibiting implementation thereof. Appeal was made. The Supreme Court held that provisions of the Act purporting to abolish the LSU Board and the Louisiana Coordinating Council for Higher Education and merging and consolidating all their powers, duties, and functions into the Board of Regents is unconstitutional, and that the LSU Board has exclusive authority over affairs of the university except as provided in that provision of the Constitution giving the Board complete autonomy over the institution and that unconstitutional portion was not akin to a diseased limb that could be severed by infirmity went to the heart of the act rendering it unconstitutional in its entirety.

Student Government Association of LSU v. Board of Supervisors, LSU
264 So. 2d. 916 (1972)

This was action for declaratory judgment to determine authority of the board of supervisors of the state university (LSU) to impose fines for violations of parking regulations established by the board for control of the vehicular traffic upon the streets and roadways of the campus. The District Court entered judgment from which the board of supervisors appealed. The Court of Appeals, 251 So. 2d. 428, affirmed. On review, the Supreme Court held that statutes providing

that the fine which may be imposed for violations of any parking regulation established by governing authority of any state-supported university shall not exceed one dollar infringes upon power given university governing boards by State Constitution to administer relationships and activities of university's students in their capacity as students on university campuses and is unconstitutional, and hence university parking regulations were not invalid insofar as the imposed fine exceeded the one dollar maximum provided by the statutes.

Constitutional provision stating that state universities shall be under direction, control, and supervision of the board of supervisors unambiguously grants the board of supervisors full administrative control of the university, and this includes not only the power to prescribe courses, to select faculty, and to hire and fire employees, but also power to adopt and to enforce, administratively, reasonable regulations governing on-campus activity and conduct of faculty, employees, and students.

Weitzel v. State of Florida 306 So. 2d. 188 (1974)

A student, on behalf of herself and others similarly situated, took action to have part of her registration fee (charged to students who were citizens of Florida for less than one year) declared to have been collected in violation of constitutional and statutory provisions and for a refund of portions of fees allegedly improperly paid by her and others similarly situated. The Circuit Court dismissed the

complaint and the student appealed. The District Court of Appeals held that tuition differential based upon one year residency requirement is constitutionally permissible and that the legislature intended to grant the Board of Regents full power and authority to prescribe rules policies, and regulations incident to tuitions fees, differentiating between citizens of Florida and students from other states and that such power and authority is sufficiently broad to authorize defining of Florida students as persons who have resided in Florida for at least one year.

Esteban v. Central Missouri State College 415 F. 2d. 1077 (1969)

Two students (Esteban and Roberds) were suspended as a result of having participated in a demonstration at the college where violent acts had occurred. The defendants asked for injunctive relief alleging First, Fifth and Fourteenth Amendment violations. The District Court ordered a new hearing on the grounds that due process had not been afforded the students. The Board of Regents held a new hearing and affirmed the suspension. The District Court recieved the case a second time, denied relief, and dismissed the complaint.

The Court of Appeals held that "conduct of college students who participated in mass gatherings that engaged in potentially disruptive conduct, aggressive action, disorder and disturbance, acts of violence and destructive interference with the rights of others did not constitute protected free speech and assembly. Courts must not interfere in disciplinary action brought against students by a university unless

there is a clear case of constitutional infringement."

Bayless v. Martine 430 F. 2d. 873 (1969)

Ten students at Southwest Texas State University were suspended for participation in a Viet Nam Moritorium demonstration. The University had granted approval to hold the demonstration in the auditorium between 11:00 and 12:00 only. The demonstration was also held outside from 10:00 to 11:00 and from 12:00 to 1:15 without authorization and against regulations published by the University and the Student Handbook, both of which called for reservations forty-eight hours in advance and for use of the place reserved only. Faculty and students complained that the outside demonstrations had disrupted regularly scheduled classes. The suspended students sued on the grounds that the regulations were overbroad. The District Court denied the preliminary injunction. The students appealed.

The Court of Appeals found that the University regulations prescribing time and place of student expression and demonstration area forty-eight hours in advance is valid exercise of university rights.

Tate v. Board of Education 453 F. 2d. 975 (1972)

Twenty-nine Negro students were suspended for demonstrating against the playing of "Dixie" at a school pep rally in Arkansas by leaving the rally while the tune was being played. Tate Brought suit for violation of First Amendment rights of free speech. The District Court held that

no federal question was involved and dismissed the case. Tate appealed. The Court of Appeals affirmed the judgment of the lower court. The Court said that action taken by the school authorities obviously averted serious trouble and was not only practical but clearly within the rights of school officials if we are to have discipine in our schools. The court should never interfere except where there is a clear case of constitutional infringement.

Regents of the University of Michigan v. Michigan Employment Relations Commission 195 N.W. 2d. 875 (1972)

This proceeding was to review a decision and order of the Michigan Employment Relations Commission whereby a representation election was ordered to be conducted among the interns, residents and postdoctoral fellows working for the regents at the University of Michigan Medical Center for the purpose of determining whether such individuals wish to be represented for collective bargaining purposes by the University of Michigan Interns-Residents Association. The Court of Appeals held that interns, residents and postgraduate fellows associated with the University Medical Center are not "public employees" within the meaning of the Public Employment Relations Act. The court said that a state university is a unique public imployer because its powers, duties, and responsibilities are derived from the Constitution rather than from enactments of legislation. The regents of the University of Michigan have exclusive control of all matters dealing with the education of the student; to this end, the legislature cannot enact any law which will

regulate or direct the manner in which the educational processes are to be conducted.

Schmidt v. Regents of the University of Michigan 233 N.W. 2d. 855 (1975)

This class action suit was brought on behalf of all students who had been denied resident status for tuition purposes under residency regulations adopted by the Regents of the University of Michigan. The Circuit Court entered summary judgment in favor of the regents and the plaintiffs appealed. The Court of Appeals held that the power of the regents to establish tuition included the power to determine residency for the exclusive purpose of attendance at the University.

Schoppelrei v. Franklin University 228 N.E. 2d. 334 (1967)

Suits were filed by former students against the University for mandatory injunctions requiring university to reinstate plaintiffs as students. The Court of Appeals held that plaintiffs who claimed entrance in defendant university by virtue of contract, payment of tuition, change in university's regulations, dismissal of plaintiffs for failure to meet terms of new regulations and readmission of fellow students amounting to discrimination against plaintiffs were properly joined as parties plaintiff and that allegation of discrimination implied a lack of even-handed justice in administration of private university's regulations warranting invoking jurisdiction of court to determine whether there had been a clear abuse of discretion. Reversed.

The court said that governing boards of private colleges and

universities have the right to make regulations, establish requirements, set scholastic standards and enforce disciplinary rules without interference of courts, except in cases of clear abuse of discretion.

People of Illinois v. Tadd 299 N.E. 2d. 8 (1973)

The defendant was prosecuted under the vehicle code for speeding on drives situated on campus of state university. The Circuit Court dismissed charges on grounds that the offense did not take place on a highway within the meaning of Vehicle Codes. The State appealed. The Appellate Court held that if the public's right to use roads in question at the time of charged offense was not qualified or denied, except as a matter of permission, under proper grant of authority, roads constituted a highway within the meaning of the Code. The Court said that the board of regents is an agency of the State and holds its campus street is trust for the People of the State. It follows that the State may empower one of its agencies, here the Board of Regents, to regulate and impair the use of streets and roads located on the campus in furtherance of particular needs and uses of the university. Thus, in effect, the regents could deny use of the roads to the general public "as a matter of right."

Sendak v. Trustees of Indiana University 260 N.E. 2d. 601 (1970)

Action was brought challenging right of the Trustees of Indiana University to use gifts and bequests from private donors to invest

in corporate stock. The Superior Court entered a summary judgment in favor of the trustees and the plaintiff state officials appealed. The Supreme Court held that Board of Trustees of Indiana University was authorized to make and hold investments in corporate stock of private corporations out of money received by it from private sources, notwithstanding constitutional prohibition against state becoming a stockholder in any corporation. The Board acts in a dual capacity, first as directors and managers of the University's operations; second, as trustees of private trusts created by private donors. In the first capacity it is a corporate body politic governing the University and in the second capacity it has the common-law duties and priviliges of a private trustee to administer funds which statute authorizes it to accept on terms and conditions fixed by private donors.

State Board of Regents v. United Paking House Workers
175 N.W. 2d. 110 (1970)

Action was taken by the state Board of Regents against union representing striking nonacademic personnel who operated physical plant of the University of Northern Iowa. The District Court held that the Board had authority to bargain collectively with the union, but enjoined defendants from picketing to coerce the Board into bargaining collectively. Both the Board and the union appealed. The Supreme Court held that state Board of regents has no authority to enter into collective bargaining or collective bargaining agreements in the "industrial context." Power to hire employees, fix their salaries

and wages, direct expenditures of money and to perform all other acts necessary and proper for execution of powers and duties conferred upon the state Board of Regents carries with it the power and authority to confer and consult with representatives of employees in order to make its judgment as to wages and working conditions.

Board of Regents v. Judge 543 P. 2d. 1323 (1975)

The Board of Regents sought statutory judgment seeking rulings on constitutionality of statutes appropriating monies for university system for biennium and providing for a Legislative Finance Committee to approve budget amendments. The Supreme Court Held that power to apporve budget amendments, vested in Legislative Finance Committee, constituted an unconstitutional delegation of legislative power; that conditioning of university system appropriations and summary procedure for compliance with conditions were proper exercises of the legislature's appropriation power to extent that conditions did not infirnge on the constitutional powers granted the Regents; that to extent certification requirement attempted to exert any control over private monies restricted by law, trust agreement, or contract or to grant any discretion over such funds to department of administration, it was unconstitutional; and that certification condition limiting salary increases for presidents of units of university system was unconstitutional infringement on powers of Regents.

Melancon v. State Board of Education 195 So. 2d. 289 (1967)

This was a taxpayer's suit. The District Court enjoined the establishment of an education center, and an appeal was taken. The Supreme Court held that the Education Center of the University of Southwestern Louisiana, which the Board sought to establish in a parish other than that designated for the location of a university, on Board land, with state funds and under state control and administration, was an "educational institution", within the meaning of the Constitution, and could not be established without special legislative authorization. Generally, a state educational institution is one, title to whose plant is vested in the state, and whose physical plant and facilities are controlled and managed by the state through one of its state-wide boards and whose funds for its operation are derived from state appropriations made by the ligislature. That institution lacked perfect autonomy, since the president of the university was interposed between it and the State Board of Education, did not alone destroy institutional design or preclude institution from falling within the Constitutional section requiring legislative approval for establishment of state educational institutions.